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Peter Gysi

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EXAMINER

CADUGAN, ERICA E

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Response to Arguments

1. Applicant's arguments filed August 18, 2010 have been fully considered but they are not persuasive.

Firstly, regarding Applicant's assertions on pages 9-11 and 15-17 regarding the lack of teachings in the prior art (the Boltshauser and Dornieden references) meeting the "opposed holding means" language in the claim due to Applicant's belief that 1) this limitation is in accordance with 35 USC 112, 6th paragraph, and 2) that as such, the two-step process set forth in MPEP section 2182 which looks to the specification and the prosecution history should be followed to determine the meaning of such terms, it is again noted that the limitation in question is not in accordance with 35 USC 112, 6th paragraph, as noted in detail in the response to arguments section in the final rejection mailed June 18, 2010. Firstly, the limitation does not use the phrase "means for" modified by any "functional language" in accordance with 35 USC 112, 6th paragraph (see also MPEP section 2181, **particularly noting that the limitation "opposed holding means" does not meet the first prong of the three-prong analysis described in MPEP section 2181**).

Furthermore, even assuming that Applicant modified the limitation to include the "means for" performing a function language (or somehow successfully argued that the term "holding means" was in accordance with 35 USC 112, 6th paragraph), it is noted that the following is a quotation of the sixth paragraph of 35 U.S.C. 112:

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such a claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

35 U.S.C. 112, 6th paragraph clearly states that means-plus-function language will only be interpreted to be limited to disclosed structure, material, or acts when the claim does not recite structure, material, or acts.

In the instant case, in claim 2, applicant claims “opposed holding means” and further recites structure to limit a “opposed holding means”, to “a plurality of individual object receivers” that are “opposed” in claim 2. Therefore, at least for this further reasoning, in the instant case, applicant’s limitation in claim 2 of “holding means” does not constitute language which is in accordance with 35 USC 112, 6th paragraph. Additionally note that claim 15 recites further structure of the "holding means", indicating that they are "magnetic" holding means, which further structural limitation would further serve to preclude the limitation in claim 15 from being considered to be a limitation in accordance with 35 USC 112, 6th paragraph.

In other words, even if Applicant were to successfully argue that the language in question meets the first prong of the three-prong analysis set forth in MPEP section 2181, it fails the third prong of the analysis by reciting structure in support of the argued function.

Thus, for at least the foregoing reasoning, the language “opposed holding means” is not interpreted in accordance with 35 USC 112, 6th paragraph, and is thus given its plain meaning or broadest reasonable interpretation.

2. Additionally, regarding Applicant’s arguments on pages 12-15 regarding the Boltshauser reference wherein Applicant argues that Boltshauser fails to teach the limitation "two conveyor belts arranged parallel to one another and driven in synchronism", it is again noted that the limitation “driven in synchronism” is a functional limitation that relates to how the belts are operated, used, or to how they function. Note that in an apparatus claim (noting that the claims in question are not method claims), all that is necessary to meet such limitation is that the belts be capable of being driven in some sort of synchronized fashion, which they are simply by turning them on at the same time. Again note that no speed or relative speed of the two belts is

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set forth in the claims, and that even if such was set forth in the claims, again, the claims are not method claims, and all that would be necessary to meet such a limitation would be the capability to so function.

Note that even in the dictionary definitions of “synchronism” and “synchronous” provided by Applicant, one of the provided definitions is "coincidence in time; contemporaneousness; simultaneousness", which is met by the ability of the belts to be turned on at the same time. Applicant's assertions in the paragraph on page 13 in the paragraph beginning "For example" appear to indicate a misunderstanding of Examiner's point -- the belts in the Boltshauser reference are operated at the same time (i.e., in a “synchronous” manner), noting that if the belt 5 was turned off and the belt 8 continued to operate (i.e., if the belts were operated in a non-synchronous manner), the system taught by Boltshauser would not function as desired, noting that if belt 8 continued to run while belt 5 was turned off, objects 3 would continue to accumulate at 10, and eventually the line would get backed up and/or objects 3 that continued to be fed by belt 8 would start to fall on the floor (if belt 5 didn't continue to operate to move them along.

Additionally, the belts 5 and 8 meet the provided definition of “arrangement or treatment of synchronous things or events in conjunction”, noting that the belts work in conjunction with one another.

Applicant appears to be attempting to only limit the meaning of the term synchronous to the definition of “going on at the same rate and exactly together”, but as evidenced even by Applicant's provided definitions, the meaning of the term “synchronism” is not that limited or narrow.

Furthermore, even assuming *arguendo* that the claims were amended to recite two belts that were driven at the same speed, again, in an apparatus claim, such is only limited to structure that is merely capable of performing that function.

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3. Examiner suggests providing further language to the structure of the arrangement of the belts and object holding structure to limit the claim to an arrangement wherein one holder is arranged on one belt, another holder is arranged on the other parallel belt, and that these holders are arranged so as together at the same time directly contact and hold the object. Attention is again, however, directed to DE 4315416 (DE '416), which, as described in paragraph 16 of the final rejection mailed June 18, 2010, teaches an arrangement with plural processing stations (see the next to last paragraph of the machine translation, for example), wherein there is an advancing arrangement including parallel conveyor belts 5 with opposed holding means 18 that hold individual objects 14. Noting that DE '416 explicitly teaches discontinuous feed of objects 14 (see the last page of the machine translation), and shows feeding (in direction 4) a single row of objects (Figure 3), the described processing stations are considered to be capable of processing a "single object" 14 "at a time" simply by discontinuously feeding one object 14 through the described processing stations and then feeding another object. Additionally, the holding arrangement for the objects 14 utilizes a permanent magnet system 19 which includes magnets 20, 21 (see Figure 6, which is a cross section along line VI-VI of Figure 1, and also at least the third page of the machine translation, and particularly the paragraphs towards the top of the page beginning "[A]dditional one a made..." and "[T]here is the possibility...").

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erica E. Cadugan whose telephone number is (571) 272-4474. The examiner can normally be reached on Monday-Thursday, 5:30 a.m. to 4:00 p.m.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David P. Bryant can be reached on (571) 272-4526. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Erica E Cadugan/
Primary Examiner
Art Unit 3726

eec
September 2, 2010